HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1643 (SB) OF 2002

Kishore Kumar,
S/o Sri Bishan Ram,
R/o Village Tharp,
Post Office- Kanda,
District- Bageshwar. .....Petitioner.

Versus

1. The Chief Army Staff, Army Head Quarters D.H.Q.P.O., New Delhi-11.
2. Commandant Sikh Light Infantry Regimental Centre, Fatehpur (U.P.)
3. Colonel Training Balation O.D.R. Sikh Light Infantry Regimental Centre, Fatehgarh, U.P.....Respondents.

Hon'ble Rajesh Tandon, J.

Heard M.C. Kandpal, Sr. Advocate assisted by Sri S.S. Chaudhary & Kuban Ali, Counsel for the petitioner and Sri Vikas Pandey, Counsel for the respondents.

2. By the present writ petition the petitioner has prayed for a writ of certiorari quashing the discharge certificate of the petitioner dated 1st December, 2001. Further prayer has been made for a writ of mandamus directing/ commanding the respondents to permit the petitioner to continue on the post of Cook.

3. Briefly stated, on the basis of the advertisement regarding the recruitment on the post of Cook in the Sikh Infantry Regimental Centre, Fatehgarh, U.P., the petitioner

appeared in the recruitment test held on 15th May, 2000 and was declared qualified vide letter dated 19th July, 2000 in the written test held on 25th June, 2001 Fatehgarh, U.P. and he was directed to join at Sikh Light Infantry Regimental Centre, Fatehgarh U.P. on 25.07.2000. Thereafter, primary medical examination was held on 25th July, 2000 and he was employed in the Army Sikh Light Infantry Regimental Centre Fatehgarh U.P. as Cook and he was allotted Number 4479637=P, rect/Cook.

4. The Board of Officer on 19th May, 2001 directed for rechecking of the height and chest of the petitioner and he was required to undergo the physical measurement.

5. Respondents have filed a counter affidavit stating therein that according to the medical test held on 19th May, 2001, the height of the petitioner was shown as 157.5 cm, which is less that the required height and the Board asked the petitioner to submit his application seeking discharge on compassionate grounds, but the petitioner refused the same.

6. Petitioner has submitted that since the appointment of the petitioner has been approved and he was selected for the post and has been treated to be in regular service since 25.07.2000, his appointment at this stage cannot be reconsidered and the height cannot be said to be not according to the Army rules and notice in this regard is quite illegal.

7. The grievance of the petitioner is that he has orally been discharged on 01.12.2001, hence he has preferred a representation before the Chief of the Army Staff on 13th December, 2001, which has been annexed as Annexure-6 to the

writ petition, but the Authorities concerned has not decided the same. In paragraph 21 of the writ petition, the petitioner has stated as under:

> "21. That aggrieved by the oral discharged by the petitioner from the service the petitioner has filed a representation before the Chief of the Army Staff on 13.12.2001 shown the detail facts."

8. A counter affidavit has been filed, where in paragraph 18, it has been stated as under:

> "18. That in reply to the contents of para on. 21 of the writ petition it is submitted that the comments on the same were forwarded vide the Sikh LI Regimental Centre letter no. 2604/AG dt. 19 Feb 2003."

9. In paragraph 21 of the counter affidavit, it has been stated that the height should be 161 cm. Instead of 157.5 cm and the petitioner in his representation has stated that he was appointed as a Cook and he was interviewed by the Commandant and his work having been found satisfactory, he cannot be discharged.

10. Petitioner has also referred the judgment passed in Writ Petition No. 2350 of 2001 (ss) Kuber Singh Vs. Union of India & Ors, where the service of the petitioner has been terminated under Rule 16 of the Central Reserve Police Force Rules, 1955 read with Sub-rule (1) of Rule 5 of the Central Civil Service (temporary service) Rules, 1965 (hereinafter referred as CCS(CCA) Rules). In that case, the petitioner was a constable and during the training period, the petitioner was withdrawn

from the training on the ground that he was short in height. Further in the aforesaid case, the termination order was passed.

11. The grievances of the petitioner in the present writ petition is that by oral order, the petitioner has been discharged for which the representation is pending.

12. In view of the above, the respondents are directed to consider the representation of the petitioner (Annexure No. 6 to the writ petition) and decided the same within a period of six weeks from the date of production of the certified copy of this order.

13. Subject to aforesaid observations, writ petition is disposed of along with all the pending applications. No order as to costs.

(Rajesh Tandon, J.)

28.08.2006
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